

**UNITED STATES – MEASURES AFFECTING THE CROSS-BORDER SUPPLY
OF GAMBLING AND BETTING SERVICES**

Recourse by Antigua and Barbuda to Article 22.2 of the DSU

The following communication, dated 21 June 2007, from the delegation of Antigua and Barbuda to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

Antigua and Barbuda requests that the following item be included in the agenda of the meeting of the Dispute Settlement Body (the "DSB") of the World Trade Organisation (the "WTO") to be held on 24 July 2007:

"United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services" (WT/DS285) – Recourse to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes by Antigua and Barbuda

Pursuant to Article 22.2 of the WTO's *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), Antigua and Barbuda requests authorization from the DSB to suspend the application to the United States of concessions and related obligations of Antigua and Barbuda under the *General Agreement on Trade in Services* (the "GATS") and the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (the "TRIPS").

Antigua and Barbuda's aim through this suspension is the effective withdrawal of concessions and other obligations so as to match the level of nullification or impairment of benefits accruing to Antigua and Barbuda, amounting to an annual value of US\$3.443 billion, as a result of the United State's failure, as of 3 April 2006, to bring its measures affecting the cross-border supply of gambling and betting services into compliance with the GATS or to otherwise comply with the rulings and recommendations of the DSB in *United States– Measures Affecting the Cross-Border Supply of Gambling and Betting Services* ("DS285").

Antigua and Barbuda has held discussions with the United States with a view towards agreement on compensation, but to date these discussions have not resulted in any agreement. Antigua and Barbuda remains hopeful that further discussions may result in resolution of this issue, and if so it will inform the DSB as soon as practicable.

Background

On 21 July 2003, the DSB established a panel at the request of Antigua and Barbuda. Both the panel and the Appellate Body in DS285 found certain measures of the United States to be inconsistent with the obligations of the United States under the GATS. On 7 April 2005, the DSB

adopted the report of the panel, as modified by the report of the Appellate Body. The resulting DSB recommendations and rulings include, *inter alia*, the recommendation that the United States bring the measures found to be inconsistent with the GATS into conformity with its obligations under that agreement (WT/DS285/AB/R, para. 374). A WTO appointed arbitrator subsequently determined that the "reasonable period of time" for the United States to implement the DSB recommendations and rulings would expire on 3 April 2006.

The compliance period expired on 3 April 2006 without action being taken by the United States to bring its measures into compliance with the recommendations and rulings of the DSB in DS285. On 10 April 2006 the United States submitted a status report to the DSB regarding implementation of the DSB recommendations and rulings in which the United States informed the DSB that, in its opinion, it was in compliance with the DSB recommendations and rulings. At a meeting of the DSB on 21 April 2006, the United States informed the Members that the United States was in compliance with the DSB Rulings. At the same meeting, Antigua expressed its disagreement with the United States' assertion of compliance.

On 23 May 2006, Antigua and the United States concluded "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding Applicable to the WTO Dispute United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services (WT/DS285)" (the "Agreed Procedures"). In conformity with the Agreed Procedures, on 8 June 2006 Antigua made recourse to Article 21.5 of the DSU by requesting consultations with the United States. Subsequent consultations were held in Washington, D.C., but did not result in a settlement of the dispute. As there was clearly a dispute between the parties "as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB in the original proceeding, on 6 July 2006 Antigua submitted a request for the establishment of a panel pursuant to Article 21.5 of the DSU, and at its meeting of 19 July 2006 the DSB agreed to form the panel.

On 30 March 2007, the panel issued its report, in which it concluded that the United States remained out of compliance with the recommendations and rulings of the DSB in this matter.

Pursuant to Article 22.2 of the DSU and paragraph 7 of the Agreed Procedures, Antigua and Barbuda hereby requests authorization from the DSB, at the next meeting of the DSB to be held following the provision of this notice, to suspend the application to the United States of concessions and related obligations under the TRIPS and the GATS in an annual amount of US \$3.443 billion.

Antigua and Barbuda Recourse to Articles 22.3(b) and (c) of the DSU

In considering what concessions and obligations to suspend, Antigua and Barbuda applied the principles and procedures set forth in Article 22.3 of the DSU, and makes this request pursuant to Articles 22.3(b) and (c). Antigua and Barbuda is a developing country with a population of approximately 80,000. With a combined landmass of only 442 square kilometres, Antigua and Barbuda is by far the smallest WTO member to have made a request for the suspension of concessions under Article 22 of the DSU and realises the difficulty of providing effective counter measures against the world's dominant economy. The natural resources of Antigua and Barbuda are negligible and as a result not only are the country's exports limited (approximately US \$4.4 million annually to the United States) but Antigua and Barbuda is required to import a substantial amount of the goods and services needed and used by the people of the country. On an annual basis, approximately 48.9 per cent of these imported goods and services come from single source providers located in the United States. The imposition of additional import duties on products imported from the United States or restrictions imposed on the provision of services from the United States by Antigua and Barbuda will have a disproportionate adverse impact on Antigua and Barbuda by making these products and services materially more expensive to the citizens of the country. Given the vast difference between

the economies of the United States and Antigua and Barbuda, additional duties or restrictions on imports of goods and services from the United States would have a much greater negative impact on Antigua and Barbuda than it would on the United States. In fact, ceasing all trade whatsoever with the United States (approximately US\$180 million annually, or less than 0.02 per cent of all exports from the United States) would have virtually no impact on the economy of the United States, which could easily shift such a relatively small volume of trade elsewhere.

Antigua and Barbuda further considers that the circumstances are serious enough to justify the suspension of concessions or obligations under other covered agreements in addition to the GATS. As a result of Antigua and Barbuda's lack of natural resources, the bulk of the economy is dependent upon tourism and the provision of banking and other financial services. Antigua and Barbuda, initially with the cooperation of the United States government, looked to the provision of gambling and betting services as a way to diversify its economy and create the growth needed to assist the country in moving from a developing to a more advanced status. Prior to the actions taken by the United States to prevent the provision of gambling and betting services from Antigua and Barbuda to consumers in the United States, it is estimated that the gambling and betting services sector accounted for more than ten per cent of the gross domestic product of Antigua and Barbuda and was the fastest growing segment of the economy. Recent efforts by the United States government to further prohibit and impede the provision of these services to consumers in the United States have greatly harmed the Antiguan service providers, while domestic providers in the United States continue to prosper in the absence of prohibition and criminal prosecution. Under the circumstances, the United States' prohibition of these services and its non-compliance with the recommendations and rulings of the DSB in DS285 forces Antigua and Barbuda to proceed in the manner requested despite the difference in level of development with the United States, the large disparity in their trade relations and despite the harsh economic reality affecting Antigua and Barbuda which affects its ability to exercise its rights under Article 22.

In addition to the reasons described above, the suspension of concessions and other obligations corresponding to a value of US \$3.443 billion and wholly applied to the importation of services from the United States is neither practicable nor effective for various reasons. First, Antigua and Barbuda made no commitments under the sector at issue in DS285, GATS Sector 10.D., "Sporting and Other Recreational Services," in its Schedule of Specific Commitments under the GATS (GATS/SC/2) (the "Antigua Schedule"). Second, with respect to most of the other services covered by the Antigua Schedule, as noted above suspension of concessions in the form of higher duties, tariffs, fees or other restrictions would have a disproportionate impact on the economy of Antigua and Barbuda and little or no impact on the United States. Third, even if Antigua and Barbuda were to rely exclusively on a suspension of concessions under the GATS, Antigua and Barbuda would clearly not be able to recover the full amount of nullification and impairment caused by the inconsistent measures.

Additionally, in Antigua and Barbuda's view, the United State's continued non-compliance renders the circumstances serious enough, within the meaning of Article 22.3(c) of the DSU, to justify the imposition of appropriate countermeasures under other covered agreements, given that Antigua and Barbuda's gaming industry will continue to suffer serious losses, the government of Antigua and Barbuda will be deprived of critical revenue, the people of Antigua and Barbuda will be enjoined from participating in much needed employment and the overall economy of the nation will continue to suffer adverse effects for such time as the United States does not withdraw the measures at issue in DS285 or remove their adverse effects.

Summary of Countermeasures

Because the withdrawal of concessions solely under the GATS is at present not practicable or effective, and the circumstances are sufficiently serious to justify Antigua and Barbuda exercising its

rights under Article 22, Antigua and Barbuda requests authorization to suspend concessions and other obligations under the TRIPS.

For the reasons given above, Antigua and Barbuda intends to take countermeasures in the form of suspension of concessions and obligations under the following sections of Part II of the TRIPS:

Section 1:	Copyright and related rights
Section 2:	Trademarks
Section 4:	Industrial designs
Section 5:	Patents
Section 7:	Protection of undisclosed information

Suspension of Concessions Under the GATS

Antigua and Barbuda may also suspend horizontal and/or sectoral concessions and obligations for the following sector contained in the Antigua Schedule:

2. Communication Services

Until such time as the United States brings its measures into compliance with the rulings and recommendations of the DSB in DS285, every year Antigua and Barbuda will notify the DSB of the amount and the form of the suspension of concessions if proposed to be different in any respect from the preceding fiscal year, as applicable.

Compliance with Article 22.4

As required by Article 22.4 of the DSU, the level of suspension of the above concessions or other obligations proposed above by Antigua and Barbuda is lower or equivalent on an annual basis to the nullification or impairment of benefits accruing to Antigua and Barbuda resulting from the United States' failure to comply with the DSB's recommendations and rulings in DS285.
